



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 1, 1996

Mr. Michael H. Corley
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR96-1810

Dear Mr. Corley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101368.

The University of Texas at Brownsville (the "university") received a request for all information related to a particular Equal Employment Opportunity Commission ("EEOC") complaint filed against the university. The university has a memorandum with attachments that is responsive to the request. You contend that these documents, copies of which you have submitted to this office for review, are excepted from disclosure under section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

This office has ruled that a pending complaint before the EEOC indicates a substantial likelihood of litigation relating to the complaint. Thus, by demonstrating that an EEOC complaint is pending against the university, you have shown that the university reasonably anticipates litigation relating to the complaint. You have also shown that the requested memorandum and attachments relate to this reasonably anticipated litigation.

However, we note that the individual who filed the EEOC complaint against the university has had access to some of the attachments that accompany the memorandum. Generally, once all

parties to litigation have gained access to the information at issue under section 552.103(a), through discovery or otherwise, section 552.103(a) is no longer applicable to that information. Open Records Decisions Nos. 551 (1990), 454 (1986). Therefore, section 552.103(a) is no longer applicable to the attachments to which the complainant has had access. Accordingly, we conclude that, pursuant to section 552.103(a), the university may withhold from disclosure the memorandum and any attachments to which the complainant has not had access. The university must release to the requestor any attachments to which the complainant has had access.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101368

Enclosures: Submitted documents

cc: Ms. Cecilia Balli
The Brownsville Herald
1135 E. Van Buren
Brownsville, Texas 78520
(w/o enclosures)